

HB 597

As one of four states which have no laws to make obscenity illegal for dissemination to all their citizens, rather than just to selected members, Montana needs the capacity to restrict the dissemination of obscenity to all Montanans, especially minors. Currently, we have laws which allow cities and counties to pass more restrictive ordinances as to adults, but not as to minors due to provisions which are absent from current law.

This bill amends "**45-8-201. Obscenity.**" In certain important respects, clarifying and narrowing some of its language. Particularly, however, it addresses a District Court's concern in Ravalli County, when Judge Langton stated in part:

However, the terms used in §§ 45-8-206 that are defined in §§ 45-8-205 may not be made more restrictive-**there is no statutory authority that allows a county to adopt an ordinance as to obscenity that is more restrictive than the provisions of §§ 45-8-205.** By substituting a different standard-material that is "harmful to minors"-for the corresponding statutory standard of "display or dissemination of obscene material to minors," the proposed ordinance has exceeded the scope of §§ 45-8-201(5) by further restricting the definition in §§ 45-8-205(1). By eliminating the applicable statutory definition of "obscene material to minors" and the above value qualification codified at §§ 45-8-205(1) and substituting a more restrictive definition, the proposed ordinance impermissibly exceeds the scope of §§ 45-8-201(5) by amending a statute other than §§ 45-8-201 or §§ 45-8-206. Thus, on the basis of statutory construction, the Court concludes that Section (1) of the proposed ordinance is invalid and illegal.

By amending 45-8-201 to read: "(5) Cities, towns, or counties may adopt ordinances or resolutions which that are more restrictive as to obscenity than the provisions of ~~45-8-206~~ 45-8-205 through 45-8-208 and this section.", this will include, among other things, the "provisions of §§ 45-8-205," to which Judge Langton referred to, above. With these amendments, Ravalli County and others may extend the protection to more Montanans than are currently protected under 45-8-201, particularly minors.

Please pass this bill out of Committee and support it on the House floor.

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45-8-205. Definitions. As used in 45-8-205 through 45-8-208, the following definitions apply:

(1) "Display or dissemination of obscene material to minors" means that quality of a description, exhibition, presentation, or representation, in whatever form, of sexual conduct or sadomasochistic abuse when the material or performance, taken as a whole, has the following characteristics:

(a) its dominant theme appeals to a minor's prurient interest in sex;

(b) it depicts or describes sexual conduct or sadomasochistic abuse in a manner that is patently offensive to contemporary standards in the adult community with respect to what is suitable for minors; and

(c) it lacks serious literary, scientific, artistic, or political value for minors. If the court finds that the material or performance has serious literary, scientific, artistic, or political value for a significant percentage of normal older minors, the material or performance may not be found to lack such value for the entire class of minors.

(2) "Material" means a book, magazine, newspaper, pamphlet, poster, print, picture, figure, image, description, motion picture film, record, recording tape, or videotape (except a motion picture or videotape rated G, PG, PG-13, or R by the motion picture association of America).

(3) "Minor" means a person under 18 years of age.

(4) "Newsstand" means a stand that distributes or sells newspapers or magazines.

(5) "Performance" means any motion picture, film, or videotape (except a motion picture or videotape rated G, PG, PG-13, or R by the motion picture association of America); phonograph record; compact disk; tape recording; preview; trailer; play; show; skit; dance; or other exhibition played or performed before an audience of one or more, with or without consideration.

(6) "Person" means any individual, partnership, association, corporation, or other legal entity of any kind.

(7) "Prurient interest in sex" means a shameful or morbid interest in sex or excretion.

(8) "Sexual conduct" includes:

(a) vaginal, anal, or oral intercourse, whether actual or simulated, normal or perverted. A sexual act is simulated when it gives the appearance of depicting actual sexual activity or the consummation of an ultimate sexual act.

(b) masturbation, excretory functions, or lewd exhibition of uncovered genitals or female breasts;

(c) sadomasochistic abuse, meaning an act or condition that depicts torture, physical restraint by being fettered or bound, or flagellation of or by a nude person or a person clad in undergarments or in a revealing or bizarre costume.

(9) "Ultimate sexual act" means vaginal or anal sexual intercourse, fellatio, cunnilingus, or bestiality.

History: En. Sec. 1, Ch. 571, L. 1989.

45-8-206. Public display or dissemination of obscene material to minors. (1) A person having custody, control, or supervision of any commercial establishment or newsstand may not knowingly or purposely:

(a) display obscene material to minors in such a way that minors, as a part of the invited public, will be able to view the material; provided, however, that a person is considered not to have displayed obscene material to minors if the material is kept behind devices commonly known as blinder racks so that the lower two-thirds of the material is not exposed to view or other reasonable efforts were made to prevent view of the material by a minor;

(b) sell, furnish, present, distribute, or otherwise disseminate to a minor or allow a minor to view, with or without consideration, any obscene material; or

(c) present to a minor or participate in presenting to a minor, with or without consideration, any performance that is obscene to minors.

(2) A person does not violate this section if:

(a) he had reasonable cause to believe the minor was 18 years of age. "Reasonable cause" includes but is not limited to being shown a draft card, driver's license, marriage license, birth certificate, educational identification card, governmental identification card, or other official or apparently official card or document purporting to establish that the person is 18 years of age;

(b) the person is, or is acting as, an employee of a bona fide public school, college, or university or a retail outlet affiliated with and serving the educational purposes of a school, college, or university and the material or performance was disseminated in accordance with policies approved by the governing body of the institution;

(c) the person is an officer, director, trustee, or employee of a public library or museum and the material or performance was acquired by the library or museum and disseminated in accordance with policies approved by the governing body of the library or museum;

(d) an exhibition in a state of nudity is for a bona fide scientific or medical purpose for a bona fide school, library, or museum; or

(e) the person is a retail sales clerk with no financial interest in the material or performance or in the establishment displaying or selling the material or performance. **History:** En. Sec. 2, Ch. 571, L. 1989.

45-8-207. Notice of violation. Before a county attorney may prosecute a person for a continuing violation of 45-8-206, he shall determine that the material or performance is obscene to minors, give the alleged violator actual notice of the determination and notice that he will be prosecuted if he does not desist, and determine that the violation continued for at least 3 days after notice was received. The person may seek a declaratory judgment on the question whether the material or performance is obscene to minors. The statute of limitations for the offense is tolled while the declaratory judgment or an appeal from it is pending.

History: En. Sec. 3, Ch. 571, L. 1989.

45-8-208. Penalties. (1) A person who is convicted of violating 45-8-206 is guilty of a misdemeanor and may be fined an amount not to exceed \$500 or be imprisoned for a term not to exceed 6 months, or both.

(2) For purposes of 45-8-206, multiple copies of the same title, monthly issue, volume and number issue, or other identical material constitutes a single offense.

History: En. Sec. 4, Ch. 571, L. 1989.